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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,248	12/01/2003	Sharon Ann Norton	P145	1932

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THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
Sycamore Building - 4th Floor
299 East Sixth Street
CINCINNATI, OH 45202

EXAMINER	
CLARK, AMY LYNN	

ART UNIT	PAPER NUMBER
1655	

MAIL DATE	DELIVERY MODE
06/05/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/725,248	NORTON ET AL.	
	Examiner	Art Unit	
	AMY L. CLARK	1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 March 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,7,9,12-14 and 20-53* is/are pending in the application.

4a) Of the above claim(s) *13 and 24-53* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,7,9,12,14 and 20-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Acknowledgment is made of the receipt and entry of the amendment filed on 03/23/2009 with the cancellation of claims 2, 8, 15 and 19, and newly amended claims 1, 9, 14, 20 and 21 (claims 13 and 24-53 remain withdrawn from consideration for the reasons of record).

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 7, 9-12, 14 and 21-23 are currently under examination.

Claim Rejections - 35 USC § 112

Claims 1, 2, 7, 9-12, 14 and 21-23 remain rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The metes and bounds of claim 1 and 14 are rendered uncertain by the phrase "wherein the composition is a gravy which is adapted for use by a companion animal" because it is unclear as to what Applicants mean by "adapted for use by a companion animal". For example, do Applicants mean that the gravy is altered or is made prior to administration to a companion animal or do Applicants mean that when administered to a companion animal, that the composition becomes gravy, or something else? The lack of clarity renders the claims indefinite since the resulting claims do not clearly set forth the metes and bounds of the patent protection desired.

Claim Rejections - 35 USC § 102

Claims 1, 7, 9-12, 14 and 21-23 remain rejected under 35 U.S.C. 102(a) as being anticipated over Cheuk et al. (B*).

Cheuk teaches a canine pet food composition comprising meat, which Cheuk teaches contains 15-25% protein (See paragraph 0037) and 5-15% fat (See paragraph 0037), beet pulp (which inherently contains insoluble fiber), in an amount of about 8 wt% to about 16 wt% or, desirably, from about 9 wt% to about 13 wt% (See paragraph 0047), which reads on from about 1% to about 10%, and vitamins and minerals (See paragraph 0040) in the form of a chunk and gravy composition (See paragraph 0051 and Claim 4). Cheuk further teaches a method of making a canine pet food composition comprising a first step, wherein the meat components are "thermally set" at and/or below temperatures of protein denaturation of the mixture and heated essentially by themselves, that is, with the essential or total absence of grains, additional water, vitamins, minerals, and the like and that the heating process generally improves the texture of the meats by inactivating the bacterial and tissue enzyme processes, it is believed, thereby providing a final pet food composition which is friable, that is, breaks under stress and that the temperature treatment is such that a slight coagulation of the protein occurs which contributes to the moisturized appearance of the protein in the final product (See paragraph 0022). Cheuk further teaches that the next step involves treating grains, which may be beet pulp (See paragraph 0040), separately and then adding them to the previously "thermally set" meat, wherein the grains are mixed and cooked at a temperature range which will achieve or essentially achieve hydration, gelatinization, and retrogradation so as to improve their binding to the meats and/or reduce the stickiness or increase the firmness of the finished product texture and additionally, complex

carbohydrate is broken down to simpler carbohydrate. Cheuk further teaches that an elevated temperature is needed to accomplish these properties, wherein this step is carried out at a temperature of up to180-200 °F but desirably not exceeding 180-185 °F can be employed (See paragraph 0023). Cheuk further teaches that various gravy components, wherein the gravy that ensues (please note that gravy is a thickened sauce, which may be gelatinous) with meat that has been heated to a temperature at or below the denaturation point of the meat portion (please note that gravy can be further defined to include juices and extractives of meat during cooking to form a thickened sauce) are made by heating such as native starches, water and the like to prepare a viscosity building slurry or fluid and that the purpose of such preparation is to increase the cohesiveness of the two components (a) and (b) so as to maintain an essentially or totally homogenous mass during the filling process into the container (See paragraph 0024 and Claim 4). Cheuk further teaches that the components are heated with water to about 180-200 °F to provide a viscosity buildup slurry or fluid so as to maintain an essentially or totally homogeneous mass during the filling process while post retorting (after filling) these material(s) will retrograde to deliver the desired characteristics such as friable texture in the final packaged canine diet when opened for consumption (See paragraph 0029).

Cheuk does not expressly teach a composition comprising from about 0.1% to about 20% of total fermentable fiber, however Cheuk teaches an amount of fermentable fiber which falls within the range claimed by Applicant, therefore, Cheuk anticipates the claimed subject matter.

Therefore, the reference anticipates the claimed subject matter.

Claim Rejections - 35 USC § 103

Claims 1, 2, 7-9, 14, 15 and 18-21 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Farag et al. (C*), in view of **http://en.wikipedia.org/wiki/Food** (W*), **http://web.archive.org/web/*/http://www.peteducation.com/article.cfm?cls=1&cat=1399&articleid=2705** (X*) and **http://dictionary.reference.com/search?q=companion&r=66** (V*) (newly reapplied as necessitated by amendment).

Farag teaches a stable, bland, free flowing food supplement (please note that food is defined as any substance that can be consumed, including liquid drinks and that food is the main source of energy and nutrition for animals, as taught by **http://en.wikipedia.org/wiki/Food**) comprising sugar beet pulp, which has a chemical composition of about 4-8% by weight water, 7-9% crude protein, which reads on a nutrient, about 15-25% crude fiber (please note that the fiber in beet pulp is insoluble and moderately fermentable, as taught by **http://web.archive.org/web/*/http://www.peteducation.com/article.cfm?cls=1&cat=1399&articleid=2705**, on page 1, paragraph 3, found in the section entitled, "The benefits of beet pulp"), which anticipates the range claimed by Applicant, about 60-70% nitrogen-free extracts and about 2.5-5% ash (See column 4, claim 9). Farag further teaches that the food supplement is usable in gravies, soups, sauces, dips and batters, as well as in imitation fruit drinks (See column 1, lines 54-62 and column 3, lines 38-49). Farag further teaches a composition comprising at least 0.25% fermentable fiber. Please note that human beings are "companion animals", since humans are defined as mammals, which is synonymous with animal, and companion is defined as "a person who accompanies or associates with another" (See **http://dictionary.reference.com/search?q=companion&r=66**).

Farag does not teach that the composition is a gravy. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the composition taught by Farag by making a gravy from a composition comprising sugar beet pulp, which has a chemical composition of about 4-8% by weight water, 7-9% crude protein, which reads on a nutrient, about 15-25% crude fiber, because Farag expressly teaches that sugar beet pulp can be included in gravies. Further, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make gravy out of sugar beet pulp since Farag expressly teaches that sugar beet pulp may be made into gravy.

From the teachings of the references, it is apparent that one of ordinary skill in the art one would have been motivated to make gravy out of sugar beet pulp to provide a beneficial gravy composition because at the time the invention was made, the instantly claimed ingredient of sugar beet pulp were known to be useful for making gravy. Thus sugar beet pulp would have been expected to be even more effective for a gray composition, as clearly taught by the above references.

Finally, one of ordinary skill in the art would have had a reasonable expectation of success to make gravy out of sugar beet pulp, to provide a beneficial gravy composition because at the time the invention was made, sugar beet pulp was known to be useful in gravies.

Based upon the beneficial teachings of the cited references, the skill of one of ordinary skill in the art, and absent evidence to the contrary, there would have been a reasonable expectation of success to result in the claimed invention.

It would have been merely a matter of judicious selection to one of ordinary skill in the art at the time the invention was made to modify the referenced by adjusting the amount of sugar beet pulp (fermentable fiber) in a gravy composition to provide the instantly claimed invention because at the time the invention was made, it was known that sugar beet pulp could be made into a gravy and because it was known that the amount of sugar beet pulp in a gravy composition could be present in an amount of 15%, which reads on about 10%. Finally, it was known in the art at the time the invention was made that the amount of fiber to be added to a composition depends upon the health requirements of an animal. Thus, the claimed invention is no more than the routine optimization of a result effect variable.

Accordingly, the claimed invention was prima facie obvious to one of ordinary skill in the art at the time the invention was made, especially in the absence of evidence to the contrary.

Response to Arguments

Applicants' arguments have been carefully considered but are not deemed to be persuasive of error in the rejection under 35 USC § 112.

Applicants argue that Applicants respectfully refer to the specification, which disclose that the "compositions herein are adapted for use by a companion animal. In this respect, as will be well-understood by the ordinarily skilled artisan, the primary use of the compositions described herein is for companion animal use and the compositions are therefore formulated as such." Applicants further argue that Applicants submit that one of skill, upon reading the written description, would readily understand the language of the claims.

However, this is not found persuasive because while the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Further, the passage highlighted by Applicants does not clarify the phrase "adapted for use by a companion animal". It is still unclear as to what "adapted for use" means for the reasons set forth in the previous Office Action and for the reasons repeated above.

Applicants' arguments with regards to the rejection under 35 U.S.C. 102(a) have been carefully considered but are not deemed to be persuasive of error in the rejection.

Applicants argue that Cheuk discloses a meat protein source (component a), a grain mix (component b) and a non-chemically modified starch, natural starch and/or carbohydrate/water component (component c). Applicants further argue that Cheuk fails to teach a composition comprising from about 1% to about 10% of total fermentable fiber wherein the composition is a gravy and that Applicants point to the specification which describes a gravy as a liquid "with the understanding that the composition may contain solid particulates or other solid material while still maintaining the overall liquid character of a composition". Applicants further argue that Cheuk discloses a "meat based material having an essentially solid mass assuming the shape of the container in which is packed" and "[t]the final mixture is filled into cans which are then sealed and sterilized. In this case, the product produced is a solid mass with recognizable discrete meat particles" (Paragraph 0049) and that Cheuk teaches a solid mass and not a gravy composition.

However this is not found persuasive because Cheuk clearly teaches that the grain component is beet pulp and is combined with meat protein and starch and heated to an elevated temperature to provide a liquid, which reads on a gravy, since gravy is a sauce made from the juice of meat, which is what results when the composition taught by Cheuk is heated. Further, Cheuk teaches that "the gravy is prepared in the usual manner, for example, by mixing grains, starches, water and vitamins, if desired, and other materials into a mixing tank wherein it is heated and then fed to the container holding the chunky materials" (See paragraph 0001). Cheuk further teaches that beet pulp is an example of a grain (See paragraph 0040) and that beet pulp is mixed and cooked at a temperature range which will achieve or essentially achieve hydration, gelatinization, and retrogradation (please note that these are all adjectives that describe gravy since gravy is no more than a thickened sauce, which may be gelatinous) so as to improve their binding to the meats and/or reduce the stickiness or increase the firmness of the finished product texture and additionally, complex carbohydrate is broken down to simpler carbohydrate. Cheuk further teaches that an elevated temperature is needed to accomplish these properties, wherein this step is carried out at a temperature of up to180-200 °F but desirably not exceeding 180-185 °F can be employed (See paragraph 0023). Despite the final appearance of the product, Cheuk teaches that claimed ingredients are in the form of a gravy, and since the gravy comprising Applicants' claimed ingredients was taught by Cheuk, the reference anticipates the claimed subject matter. Furthermore, Applicants' claim explicitly states that the gravy of the composition may be adapted (please note that adapted means "changed in order to improve or made more fit for a particular purpose" and "to make suitable to or fit for a specific use or situation") for use by a companion animal. Given the broadest reasonable interpretation of

"adapted for use by a companion animal, Cheuk does in fact teach Applicants' claimed invention, since Cheuk teaches a canine pet food composition that is originally in liquid form that solidifies when cooled to provide a pet food composition in a form that is more easily and readily useable by a companion animal.

With regards to the argument that Cheuk fails to teach a composition comprising from about 1% to about 10% of total fermentable fiber wherein the composition is a gravy and that Applicants point to the specification which describes a gravy as a liquid "with the understanding that the composition may contain solid particulates or other solid material while still maintaining the overall liquid character of a composition", the specification does not explicitly stated that this gravy is the final state of the composition. Since it the composition is in gravy form consistent with Applicants disclosure and definition of gravy, the composition taught by Cheuk reads on Applicants claimed invention, particularly since Applicants even state that there can be solid material intermixed. Therefore, the composition taught by Cheuk reads on a gravy "adapted for use by a companion animal" and the reference anticipates the claimed subject matter.

Applicants' arguments with regards to the rejection under 35 U.S.C. 103(a) have been carefully considered but are not deemed to be persuasive of error in the rejection.

Applicants argue that Farag specifically teaches that the composition is dry and quickly swells in hot or cold aqueous systems, thereby creating a filling and thickening material. Applicants further argue that Farag does not teach that the composition may be provided as a gravy composition itself nor does Farag provide any reasonable expectation in modifying the composition from a dry form into a gravy.

However, this is not found persuasive because Applicants are claiming a composition comprising fermentable fiber, wherein the composition is in the form of a gravy that is adapted for use by a companion animal. The claim does not claim that the fermentable fiber itself is gravy, nor does it expressly say that the fermentable fiber cannot be a solid that is a component of gravy, also, it does not discount using an ingredient that a companion animal can convert into gravy, based upon the way the claim is written. Please note that flour, which is a common ingredient in gravies, also quickly swells in hot or cold aqueous system to provide a filling and thickening material. Gravy requires this property in order to form what is considered to be gravy. Farag expressly teaches that the composition can be made into a gravy. Therefore, it would have been obvious to make Farag's composition into a gravy for the reasons set forth above and presented in the previous Office Action.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy L. Clark whose telephone number is (571)272-1310. The examiner can normally be reached on Monday to Friday between 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ALC
Examiner, AU 1655

/Christopher R. Tate/
Primary Examiner, Art Unit 1655